

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 02-353
in the 1.7 GHz and 2.1 GHz Bands)	

To: The Commission

COMMENTS

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits these Comments in response to the invitation of the Federal Communications Commission (“FCC” or “Commission”)² to comment on the service rules for Advanced Wireless Services (“AWS”) in the 1.7 GHz and 2.1 GHz bands. The FCC invited input on numerous issues pertaining to its plans to conduct an auction of 90 MHz of spectrum useful for AWS, also known as “3G” services.

I. Introduction

1. RCA appreciates the opportunity to comment upon the Commission’s proposed framework for licensing the subject spectrum, including determination of size of geographic licensing areas, spectrum blocks and pairing, spectrum clearing and reimbursement, partitioning and disaggregation, bid credits for designated entities as well as other regulatory and technical issues related to the upcoming auction. RCA provides recommendations that arise from the concerns of

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

² *Notice of Proposed Rulemaking*, WT Docket No. 02-353, FCC 02-305, released November 22, 2002 (“NPRM”).

its members which provide cellular and/or broadband Personal Communications Services (“PCS”) in rural and small markets of the United States. RCA members have an outstanding record of service in the markets they serve. And they have a desire to improve service offerings as technology evolves, allowing rural consumers to benefit from the same advances in telecommunications as are enjoyed by urban citizens.

2. Inherent Bias in Auction Process. The use of auctions as the primary means to assign spectrum to licensees inherently favors entities with access to money from the public markets over entities that normally depend upon internal resources and debt financing. RCA members are in the second category, and must compete in auctions against entities that can sell additional stock or bonds to raise virtually any sum that is required to cover the cost of success in acquiring spectrum at auctions.³ The Commission should be attentive to how its decisions that govern each auction may add to the large-company advantage that is inherent in the auction system and impact (i) the opportunities of small entities to acquire spectrum; and (ii) the likelihood that purchased spectrum will be utilized in rural areas.

II. Geographic Area Licensing

3. The size of license areas offered at auction is frequently too large to allow rural service providers to compete successfully in the acquisition of needed spectrum. Large license areas such as Economic Areas (“EAs”), or even larger areas such as Major Economic Areas (“MEAs”), contain urban areas with high population densities that make the purchase of license rights too

³ A few small entities with financial ties to large entities may have the same abilities as large, publicly-held companies to raise capital in order to acquire spectrum at auction. As these comments will explain, the Commission’s attempts to assist small entities through bidding credits have not been effective to level the playing field for small entities that are without ties to large companies, as opposed to entities that are organized in a manner to capture bidding credits but which also benefit from access to capital from large companies.

expensive for an entity that desires to serve the rural areas alone. **Use of Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”) as license areas is the proper balance in market size. It allows all bidders to mix and match rural and urban areas according to their individual business plans and financial capabilities.** The availability of RSA licenses, which by definition encompass only counties that are outside of all MSAs, is especially important to small entities, and it does not disadvantage the large entities because large companies can make an independent choice of whether to pursue licenses for rural markets in addition to metropolitan markets.

4. Uniformity Needed in Geographic License Areas. Not only should MSA- and RSA-sized areas be available in any spectrum auction, but **all licenses offered in the 90 MHz auction should be MSA- and RSA-sized.** This would promote access to spectrum by entities of all sizes and encourage deployment of service over the purchased spectrum. When the Commission sells EA- or MEA-sized license areas, it is effectively limiting competition for those licenses to a smaller subset of entities that can afford to bid on the concentrations of populations in those areas.⁴ When licenses covering larger areas are offered in combination with MSA/RSA sized licenses,⁵ maximum competition among bidders is possible only as to the MSA/RSA licenses, which serve as the common denominator of available licenses.

4 The Commission establishes minimum bids for licenses based upon the population of the market area.

5 In Auction #44, for the Lower 700 Band licenses, the Commission offered MSA/RSA-sized licenses as well as licenses for larger geographic areas. The Commission may take official notice of the fact that interest and bidding activity on the MSA/RSA licenses substantially exceeded that evidenced for the larger license areas.

5. Moreover, it is an inefficient assignment of spectrum to group rural counties with metropolitan areas when geographic areas are licensed. Companies that can afford to purchase metropolitan area licenses may have less interest in serving the rural areas, and yet they are required to purchase both when the Commission bundles the rural counties with densely populated counties. While the Commission's rules allow large companies to partition and assign unneeded portions of license areas, such areas are often not partitioned for a variety of reasons.⁶ The effect of excessively large or inefficiently sized geographic license areas is a lost opportunity to allow spectrum to reach an entity that would make better use of it.

III. Number of Licenses and Spectrum Pairing

6. RCA recommends that the 90 MHz of available spectrum, if offered solely according to MSA and RSA license boundaries, be divided into three spectrum blocks of 30 MHz each, in 15 MHz pairs. It is believed that offering AWS will require service providers to make use of relatively large blocks of spectrum and that 30 MHz licenses will facilitate the new service offerings efficiently.

7. The ability of small carriers to acquire one of the licenses and offer AWS as a complement to wireless telephone service is largely dependent upon the Commission's determination of geographic license area. If the Commission were to offer any of the 90 MHz with license areas larger than MSA and RSA boundaries, it is unlikely that small carriers would be able to compete successfully for those licenses. In the event that the Commission chooses to offer the licenses with larger geographic areas, it should announce its tentative conclusion and invite further public comment on appropriate spectrum blocks and pairing.

⁶ See Section VI, *infra*.

IV. Accumulation of Licenses

8. RCA urges the Commission to adopt a 30 MHz limit on the amount of spectrum from the 90 MHz available that any bidder (including affiliates) may acquire in the same geographic license area. If bidders are permitted to acquire more spectrum, smaller entities would be disadvantaged as they compete for licenses and the public would not fully benefit from competition that is expected to develop in the offering of AWS. Adoption of a 30 MHz limit would make unnecessary an analysis of the other spectrum holdings of a high bidder.

V. Performance Requirements

9. RCA recommends that the Commission adopt no mid-license term construction requirement relating to the subject spectrum. Experience with PCS mid-term construction requirements shows that nearly all licensees accomplish sufficient construction to save licenses from forfeiture at the five-year deadlines. In many markets it is possible for licensees to meet the applicable 25% or 33 1/3% population coverage requirement by installation of a small number of cell sites in the market, with as few as one or two cell sites sufficient in some rural markets. That type of construction allows larger wireless carriers to avoid entering into automatic roaming agreements with other, typically smaller, carriers that have built out the rural markets more fully. The public is not well served under such circumstances because a roamer's ability to obtain continuous wireless service while traveling in rural markets is diminished when carriers that have technically compatible systems do not also have automatic roaming agreements.

10. Companies that purchase licenses for AWS need flexibility as to when to implement their business plans. It is especially important with new technology that licensees retain the ability to evaluate products, perhaps with extensive testing under market conditions, and roll-out new

systems on a schedule that conforms with business plans, not license conditions. The Commission's valid concerns over the potential for spectrum warehousing can be addressed by promotion of partitioning and disaggregation as means to encourage effective use of spectrum.

VI. Partitioning and Disaggregation to the Commission for Credit in Future Auctions Would Improve Access to Unused Spectrum by Entities Desiring to Serve Rural Areas

11. Partitioning and disaggregation can be effective under some circumstances, but any use of these spectrum reassignment methods is an indication that appropriately sized geographic license areas and useful blocks of spectrum were not available for purchase at the outset. As RCA suggests herein, the license areas offered for all 90 MHz of available spectrum should be according to MSAs and RSAs rather than by other county groupings such as EAs or MEAs.

12. When a geographic area or block of spectrum becomes available for partitioning, it is almost always a large wireless company that is offering it to a small wireless carrier that has experience in serving rural areas. Not surprisingly, the large companies have disproportionate bargaining power in establishing the terms for any partitioning and disaggregation. Large companies that acquire rural area spectrum when they purchase large license areas can meet FCC performance requirements without ever serving the rural areas. The unfortunate result is that the large companies can dictate terms for partitioning and disaggregation or decline to make the area and spectrum available at all. Typical conditions imposed upon partitionees and disaggregatees include network build-out requirements according to the large company's specifications, and agreement to a large company's proposed roaming rates without any indication of whether the investment can be recouped.

13. The Commission could achieve dual goals of avoiding spectrum warehousing and promoting use of spectrum in rural areas if the Commission adopted a program to accept unused spectrum and geographic license area for monetary credit toward a carrier's future auction purchases. The Commission could then reoffer the returned spectrum, allowing its purchase at auction by an entity with a plan to make use of the partitioned and/or disaggregated spectrum.⁷ This system need not replace private market agreements for partitioning and disaggregation; rather, it could be used to augment the current system and provide incentive for the return of spectrum for reauction. If carriers can purchase spectrum in more useful blocks and return any excess spectrum, the Commission will perform its responsibilities more effectively and carriers can acquire and dispose of spectrum more efficiently.

VII. Spectrum Clearing and Reimbursement of Incumbents' Relocation Costs

14. The Commission's plan to make available to potential bidders information on incumbent Federal users' costs for relocation is commendable, and much needed. Bidders in previous auctions have had insufficient information in this regard and have incurred unexpected and substantial costs as they attempted to implement their business plans. The Commission should likewise determine the maximum reimbursement payable to non-Federal incumbents in the 90 MHz at issue.

15. Accurate information regarding all incumbent licensees in the band and maximum reimbursement liability of the new licensees should be disclosed to potential auction applicants not less than 90 days prior to the deadline for submission of "short-form" applications for the auction.

⁷ The Commission might study the federal government's plan that allows sale of tax credits by those who cannot make economic use of them.

Interested persons need sufficient time to develop business plans, and knowledge of relocation costs and related timing issues are important components of those plans.

16. If new licensees of the spectrum in issue are required to pay incumbent relocation costs, the Commission must develop effective dispute resolution procedures when parties cannot agree on relocation cost or timing issues. Incumbents must not be permitted to impede use of purchased spectrum rights by unreasonable reimbursement demands or delay. Most problems of this type could be avoided if Congress allows use of auction proceeds to reimburse incumbents for relocation.

VIII. License Terms

17. Because the subject spectrum is heavily encumbered by Federal and non-Federal users that need to be relocated, and in recognition of other obstacles to deployment of the spectrum for 3G services, the Commission should set initial license terms at 15 years. The typical 10-year license term for cellular and PCS licenses is insufficient in this instance. A renewal expectancy similar to that in effect for cellular licensees should be adopted, with 10 or 15-year renewal terms for licensees that meet the standards.

IX. Provisions for Designated Entities

18. Attempts by the Commission to assist “Designated Entities” such as “Small Businesses” or “Very Small Businesses” compete in spectrum auctions generally have not achieved the intended purpose. Despite efforts by the Commission to offer the benefits only to those that are within the financial limitations specified, some bidders have been able to qualify for bidding credits or license eligibility and also have the advantage of large company participation in their financial affairs. There is no indication that rules of the Commission have been violated, for it is simply not

possible (and may be undesirable for a variety of reasons) for the Commission to envision and prohibit every possible type of financial benefit that a large company could provide to a small business bidder. Efforts by the Commission to assist small and very small businesses in competing for licenses are commendable, but not particularly effective.

19. Nevertheless, if the Commission uses bidding credits or eligibility limitations in the future, rural wireless carriers that are “Small Businesses” or “Very Small Businesses” should be given no lesser access to such opportunities than is granted to other Designated Entities such as rural telephone companies with whom rural wireless carriers compete in the offering of local access service in rural areas. The Commission to date has successfully encouraged the development of competition in local telecommunications services in rural areas through competitively neutral rules and policies. Any use of bidding credits or license set asides with respect to the spectrum at issue should not disadvantage rural wireless carriers that are attempting to provide spectrum-based competition to incumbent landline exchange carriers.

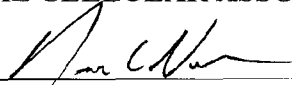
X. Conclusion

20. The rules and auction framework adopted in this proceeding will determine to a large extent whether or not the public in rural areas and small markets of the United States will enjoy the benefits of 3G and advanced wireless services that will soon become available in urban markets. It is within the Commission’s control to encourage entities interested in serving the lesser populated areas to participate in the auction and, upon their winning licenses, to deliver the services possible through continuing developments in technology. There is no issue more important in this regard than the size of geographic license areas to be offered. If the Commission offers all 90 MHz of the spectrum according to MSA and RSA boundaries, bidders will have the flexibility necessary to

develop business plans tailored to their markets of interest and to acquire the spectrum they need to deliver new and innovative wireless services to the public. Through the various measures RCA suggests herein, the Commission can make available all 90 MHz of spectrum on terms that are equitable for large and small entities alike and, in the process, promote the availability of advanced wireless services in all regions of the country, both rural and urban alike.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

A handwritten signature in dark ink, appearing to read "David L. Nace", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 7th day of February, 2003, sent by hand-delivery, a copy of the foregoing COMMENTS to the following:

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